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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/037,795      | 01/03/2002  | John A. Krueger      | SPEC - 6137         | 6948             |

7590 07/07/2006  
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EXAMINER

FOREMAN, JONATHAN M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3736

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/037,795

Applicant(s)

KRUEGER, JOHN A.

Examiner

Jonathan ML Foreman

Art Unit

3736

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
JMLF

Continuation of 11. does NOT place the application in condition for allowance because: Applicant asserts that the Examiner's assertion of everything fitting the description of "introducing or collecting something from the body" is related for purposes of obviousness is overreaching and analogous to asserting that any invention having to do with the ocean is related to one of ordinary skill. However, the Examiner does not agree with Applicant's assertion and believes Pyles to be pertinent. Although inventions having to do with the ocean are relevant to one having ordinary skill in the art of oceanography, the Examiner sees no correlation to oceans and medical procedures. As the Examiner has stated before, Krueger et al. and Pyles, as well as the present invention are all related to the field of inserting hollow members into a patient in order to introduce or collect a material from the body. Additionally, Krueger et al. teaches a need in the field of bone marrow sampling for minimizing damage to the bone marrow tissue during sampling (Col. 1, lines 30 - 35). The rotating needle used to perform the bone marrow sampling disclosed by Krueger et al. rotates within the bone marrow tissue (Col. 7, lines 48 - 51) and includes a laterally oriented distal opening (93) adjacent to the tip. Pyles teaches a rotating needle capable of removing material from the body (See Howe; Col. 1, lines 4 - 31) that minimizes damage to the tissue with which it is inserted and allows for improved control by a physician while rotating (Col. 4, lines 5 - 11). Pyles is considered pertinent to Krueger et al. as well as Applicant's endeavor in that it deals with a needle rotated within a patient's body which minimizes damage and allows for improved control by a physician while rotating. The matter with which Pyles deals would have logically commended itself to an inventor's attention. Additionally, Applicant asserts that the Krueger system is structured for penetration through solid cortical (hard tissue), and that the soft tissue usage needle would not be contemplated by one of ordinary skill in the art to a hard tissue application through the cortex. However, Krueger et al. discloses utilizing the outer cannula and the stylet to penetrate the bone cortex (Col. 7, lines 18 - 20). After penetrating the cortex, the stylet is removed and the aspiration needle (80) is inserted into the softer marrow (Col. 7, lines 23 - 26) .



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